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Federal Communications Commission

DA 94-255

SECTION

Before the

Federal Communications Commission

Washington, D.C. 20554

APR 5 4 00 PM '94

DISPATCHED BY MM Docket No. 94-27

In re Applications of

CUMBERLAND File No. BPED-920508MD

COMMUNITIES

COMMUNICATIONS CORP.

(Hereafter "Cumberland")

Pioneer, Tennessee

Req: 89.3 MHz; Channel 207A

0.3 kW (H&V); 234 meters (H&V)

THE MOODY File No. BPED-920810MA

BIBLE INSTITUTE OF

CHICAGO

(Hereafter "Moody")

Crossville, Tennessee

Req: 89.3 MHz; Channel 207A

0.500 kW (H&V); 425 meters (V)

For Construction Permit for a
New Noncommercial, Educational
FM Station

HEARING DESIGNATION ORDER

Adopted: March 17, 1994;

Released: April 5, 1994

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new noncommercial, educational FM station.

2. *Moody*. *Moody* seeks a waiver of 47 C.F.R. § 73.1125(a)(4) to operate its proposed Crossville facility as a satellite station of commonly owned station, WMBW-FM, Chattanooga, Tennessee. In order to ensure that local issues in Crossville will be met, *Moody* has agreed to undertake the following:

A. Ascertain the problems, needs and interests of Crossville and address these through its programming.

B. The ascertainment will be conducted by a local representative of *Moody* who will be located in Crossville and by periodic visits to Crossville by management employees of *Moody*.

C. Develop programming specifically designed to address the needs and interests of Crossville based on the results of the ascertainment survey.

D. Maintain a toll-free telephone line between Crossville and the studio of WMBW-FM in Chattanooga.

3. A "satellite" station has been defined by the Commission as one "operating on a channel specified in the ... Table of Assignments and meeting all of the technical requirements of our rules, but one which usually originates no local programming It rebroadcasts the programming of the parent station." *Multiple Ownership Rules*, 3 RR 2d 1554, 1562 (1964). Satellite stations involve deviations from such Commission regulations as the station main studio location rule (Section 73.1125).

4. The Commission has stated that "we have recognized the benefits of centralized operations for noncommercial educational stations, given the limited funding available to these stations, and we have granted waivers to state and regional public television and radio networks to operate satellite stations that do not necessarily meet the requirements of a main studio. These stations, however, have not been permitted to ignore local service obligations, and waivers generally have been granted only upon a showing that the local community would be served." *Memorandum Opinion and Order* in MM Docket No. 86-406, 3 FCC Rcd 5024 (1988). Thus, local needs should be met by this applicant.

5. We have determined that *Moody* has established that its centrally programmed simultaneous schedule will serve the problems, needs and interests of Crossville. Accordingly, in the event a construction permit is issued to *Moody* as a result of this proceeding, we will waive the provisions of 47 C.F.R. § 73.1125(a)(4).

6. *Other Matters*. *Moody's* and *Cumberland's* proposals are for different communities. Consequently, it will be necessary to determine, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

7. Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

8. Except as may be indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby;
- (b) whether a share-time arrangement between the

applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

2. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if either.

10. IT IS FURTHER ORDERED, That in the event a construction permit is awarded to Moody as a result of this proceeding, in light of the discussion in paragraphs 2 through 5, hereinabove, the provisions of 47 C.F.R. § 73.1125(a)(4) ARE HEREBY WAIVED.

11. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein, shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Linda B. Blair, Assistant Chief
Audio Services Division
Mass Media Bureau